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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PHILLIP JOHN TING,

Defendant and Appellant.

G046672

(Super. Ct. No. 10HF0817)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig E. Robison, Judge. Affirmed with directions.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, James D. Dutton, and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant, Phillip John Ting, appeals arguing the abstract of judgment needs to be corrected to reduce the state restitution and parole revocation fines from \$240 \$200 each so as to accurately reflect the trial court's oral pronouncement of the lesser fine and because the imposition of the \$240 fine would violate the ex post facto clauses of the California and federal Constitutions. We agree with defendant's first claim and order the abstract of judgment corrected.

FACTS AND PROCEDURAL HISTORY

The prosecution charged defendant with 15 counts. Seven counts charged defendant with residential burglary (Pen. Code, §§ 459 and 460, subd. (a); all further statutory references are to the Penal Code.) and another five counts charged him with vehicle burglary (§§ 459 and 460, subd. (b)). Several of the counts included an allegation that a nonaccomplice was present during the crime (§ 667.5, subd. (c)(21). Three additional counts charged defendant with receiving stolen property (§ 496, subd. (a)), stalking (§ 646.9, subd. (a)), and attempted petty theft (§ 664, subd. (b) and 484-488). Lastly, as to all but one of the counts, it was alleged the offenses were committed as a result of sexual compulsion and for purposes of sexual gratification (§ 290.006).

Defendant pleaded guilty to all counts. Before doing so, he initialed and signed an advisement and waiver of rights form. On page three of the form, he initialed a paragraph, which stated he "voluntarily agree[d] and underst[oo]d the court will" order him to pay mandatory restitution and parole revocation fines pursuant to sections 1202.4 and 1202.45 in amounts between \$240 and \$10,000.

Defendant received an agreed upon term of 12 years in state prison. The trial court also ordered defendant to pay several fines by orally imposing a state restitution fine of \$200 under section 1202.4, and stayed a parole revocation fine of \$200

under section 1202.45. The abstract of judgment reflects a state restitution fine and a parole revocation fine of \$240 each, which is consistent with the 2012 amendment to section 1202.4. Defendant appeals.

DISCUSSION

In part, defendant contends the abstract of judgment needs to be corrected to reduce the state restitution and parole revocation fines from \$240 each to \$200 so as to accurately reflect the trial court's oral pronouncement of the lesser amount. Respondent asserts defendant was required to obtain a certificate of probable cause. But, respondent concedes that, if defendant was not required to obtain such a certificate, this court should grant him the relief sought. Both parties agree the abstract of judgment conflicts with the trial court's pronouncement as it relates to the fines. Thus, we need only address the contentions related to the certificate of probable cause.

1. Certificate of Probable Cause

Respondent contends defendant's claim should be dismissed because of his failure to obtain a certificate of probable cause. We disagree. In order to challenge the validity of a guilty plea, the defendant must obtain a certificate of probable cause from the superior court. (§ 1237.5; *People v. Panizzon* (1996) 13 Cal.4th 68, 74.) However, a certificate is not required when the appeal does not attack the validity of the plea, but relates to matters occurring after entry of the plea. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1096.) A certificate is not required when appealing a trial court's discretionary sentencing choices left open by the plea agreement. (*People v. Buttram* (2003) 30 Cal.4th 773, 790-791.)

This appeal relates to one of the trial court's postplea discretionary sentencing choices. Thus, defendant was not required to obtain a certificate of probable cause.

2. Abstract of Judgment

a. Oral pronouncement controls

When there is a discrepancy between the oral pronouncement of a sentence and the minute order or the abstract of judgment, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Here, the trial court orally pronounced defendant's restitution and parole revocation fines would be \$200 each. The abstract of judgment states the fines were \$240 each. The oral pronouncement controls.

b. Order abstract of judgment corrected

Appellate courts may order correction of abstracts of judgment that do not accurately reflect the oral judgments of sentencing courts. (*People v. Mitchell, supra*, 26 Cal.4th at p. 185). In *People v. Avila*, (1999) 75 Cal.App.4th 416, the Attorney General conceded the error was clerical and should be corrected. (*Id.* at p. 424.) The court ordered the abstract of judgment modified to reflect the actual sentence imposed by the sentencing court. (*Ibid.*) As in *Avila*, the Attorney General concedes that the abstract of judgment does not accurately reflect the trial court's oral pronouncement and should be corrected. Therefore, we order the abstract of judgment be corrected so as to reflect the trial court's oral pronouncement of a \$200 restitution fine and a \$200 parole revocation fine.

DISPOSITION

The clerk of the superior court is directed to prepare an amended abstract of judgment reflecting the modified sentence and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.